

In the Court of Appeals of the State of Alaska

Jesse Barron-Katairoak,

Appellant,

V.

State of Alaska,

Appellee.

Court of Appeals No. **A-12683**

Order

Date of Order: **June 18, 2019**

Trial Court Case # 4FA-13-01446CR

The Appellant, Jesse Barron-Katairoak, litigated a felony sentence appeal in this Court. *See Barron-Katairoak v. State*, Alaska App. Summary Disposition No. 19 (April 17, 2019). Mr. Barron-Katairoak was represented at public expense by an Assistant Public Defender.

After the appeal was decided, the Clerk of the Appellate Courts notified Mr. Barron-Katairoak that she intended to enter judgment against him for attorney's fees in the amount of \$2,000. *See* Appellate Rule 209(b)(6). Mr. Barron-Katairoak now belatedly seeks judicial review of the Clerk's decision, and the Public Defender Agency has filed a motion asking the Court to accept the late-file request.

Appellate Rule 209(b)(6) requires indigent appellants whose convictions are affirmed on appeal to reimburse the government some of the cost of the attorneys who represent them at public expense. Because Mr. Barron-Katairoak's convictions were implicitly affirmed in this appeal, Mr. Barron-Katairoak is required to reimburse the government some of the cost of the attorney who represented Mr. Barron-Katairoak at public expense.

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Mr. Barron-Katairoak, however, asserts that he should not have to pay the judgment for attorneys fees because this Court — lacking jurisdiction to review whether his sentence was excessive — referred that issue to Supreme Court under Appellate Rule 215(a)(1) & (5). This is true, but in addition to his claim that his sentence was excessive, Barron-Katairoak raised a second issue — whether the sentencing court erred when it declined to remove any reference from the presentence report of Barron-Katairoak’s reported score on the Ontario Domestic Assault Risk Assessment (ODARA). This Court had jurisdiction to address this second issue, and the Court agreed with Mr. Barron-Katairoak that the superior court had erred. The Court then concluded that, once the Supreme Court had addressed Mr. Barron-Katairoak’s excessive sentence claim, the case should be remanded to the superior court to either resolve the factual dispute about Mr. Barron-Katairoak’s ODARA score or delete it from the presentence report.

The Supreme Court denied Mr. Barron-Katairoak’s petition for review of his excessive sentence claim, and then remanded the case to the superior court. (See Order dated May 31, 2019, Case No. S-17444). Because Mr. Barron-Katairoak’s conviction was not reversed, he must reimburse the government some of the cost of the attorneys who represent him at public expense. That said, this Court notes that while this appeal was filed as a felony merit and sentence appeal, the Court processed it as a felony sentence appeal. For this reason, under Appellate Rule 209(b)(6), Mr. Barron-Katairoak must pay \$500, not \$2000.

IT IS ORDERED:

1. The motion to accept Mr. Barron-Katairoak’s late-filed request for judicial review is **GRANTED**.

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2. The decision of the Clerk is **AFFIRMED IN PART**, and the Clerk is directed to enter an amended judgment against Mr. Barron-Katairoak in the amount of **\$500**.

Entered at the direction of Chief Judge Allard.

Clerk of the Appellate Courts



Beth A. Pechota, Deputy Clerk

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